

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

<p>JIMMY EDWARDS, ROBERT HUNT, DOLORES HUNT, CLIFFORD MCKELLAR, JR., EMMA MCKELLAR, on behalf of themselves and all others similarly situated,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center"><i>v.</i></p> <p>CSX Transportation, Inc.,</p> <p style="text-align:center">Defendant.</p>	<p>Case No. 7:18-cv-169-BO</p> <p><i>Consolidated with Cases No. 7:18-cv-177-BO and No. 7:18-cv-178-BO</i></p>
<p>ANTOINETTE MOORE, individually and on behalf of all others similarly situated,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center"><i>v.</i></p> <p>CSX Transportation, Inc.,</p> <p style="text-align:center">Defendant.</p>	<p>Case No. 7:18-cv-177-BO</p>
<p>WEST LUMBERTON BAPTIST CHURCH, CURRIE CHAIN SAW, INC., C.J.M. VENTURES, INC., WILLIAM LOCKLEAR d/b/a STRICKLAND'S BARBERSHOP, TBL ENVIRONMENTAL LABORATORY, INC., SAMMY'S AUTO SALES, INC., LINDA SAMPSON, and ERIC CHAVIS,</p> <p>individually and on behalf all others similarly situated,</p> <p style="text-align:center">Plaintiffs,</p>	<p>Case No. 7:18-cv-178-BO</p>

v.

CSX TRANSPORTATION, INC.,

Defendant.

AMENDED COMPLAINT

1. This is a complaint for damages arising from flooding caused by the Defendant, informally known as the CSX railroad company. CSX owns and maintains tracks running through the city of Lumberton, North Carolina. The CSX tracks run roughly adjacent to the Lumber River and through a gap in the embankment under Interstate 95. The local authorities have constructed a levee system to protect Lumberton residents and businesses from river-borne flooding. At the time the system was built, CSX agreed to allow the City of Lumberton to close the gap.

2. However, CSX has reneged on its agreement, not closed the gap that it maintains in the levee system, and has actively impeded the City's efforts to close the gap. Predictably, and as a direct result of CSX's bad acts, the southern and western parts of Lumberton unnecessarily flooded during Hurricane Matthew and Hurricane Florence.

3. Plaintiffs and members of the proposed class are Lumberton residents and businesses whose properties were flooded during Hurricane Matthew (October 2016) and Hurricane Florence (September 2018) as a result of CSX's actions. Plaintiffs have suffered significant economic losses as a result.

PARTIES

4. All Plaintiffs own property or operate businesses in Lumberton. All Plaintiffs suffered significant damage when floodwaters rose after Hurricanes Matthew and Florence and flowed through the gap in the City's levee system where the CSX tracks run under I-95.
5. Plaintiff Jimmy Edwards owns a home at 66 National Avenue, Lumberton, North Carolina.
6. Plaintiffs Robert Hunt and Dolores Hunt own a home at 2404 and 2405 Arnold Street, Lumberton, North Carolina.
7. Plaintiffs Clifford McKellar, Jr. and Emma McKellar own a home at 2410 Arnold Street, Lumberton, North Carolina.
8. Plaintiff Antoinette Moore owns a home at 28 Lake Drive, Lumberton, North Carolina.
9. Plaintiff West Lumberton Baptist Church is a nonprofit corporation organized under the laws of the State of North Carolina. It is located at 2320 West 5th Street, Lumberton, North Carolina.
10. Plaintiff Currie Chain Saw, Inc. is a corporation organized under the laws of the State of North Carolina. It is located at 1311 West 5th Street, Lumberton, North Carolina.
11. Plaintiff C.J.M. Ventures, Inc. is a corporation organized under the laws of the State of North Carolina. It owns property located at 1001 West 5th Street, Lumberton, North Carolina.
12. Plaintiff William Locklear does business as Strickland's Barbershop, which is located at 2209 West 5th Street, Lumberton, North Carolina.

13. Plaintiff TBL Environmental Laboratory, Inc. is a corporation organized under the laws of the State of North Carolina. It is located at 2401 West 5th Street, Lumberton, North Carolina.

14. Plaintiff Sammy's Auto Sales, Inc. is a corporation organized under the laws of the State of North Carolina. It is located at 1509 West 5th Street, Lumberton, North Carolina.

15. Plaintiff Linda Sampson owns a home at 2912 Anne Street, Lumberton, North Carolina.

16. Plaintiff Eric Chavis owns a home at 2960 Bragg Street, Lumberton, North Carolina.

17. Defendant CSX Transportation, Inc., which will be referred to as "CSX" throughout this complaint, is a corporation organized and existing under the laws of the State of Virginia, with a principal place of business at 500 Water Street, Jacksonville, Florida. CSX owns and operates a railroad running through the City of Lumberton.

JURISDICTION AND VENUE

18. The Court has jurisdiction over this action under 28 U.S.C. § 1332(a), the general diversity statute, because the amount in controversy exceeds \$75,000 and there is complete diversity of citizenship between the parties.

19. The Court also has jurisdiction under 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act of 2005, because the amount in controversy exceeds \$5,000,000, there is at least minimal diversity between the parties, and there are more than 100 proposed class members.

20. Venue lies in this district under 28 U.S.C. § 1391(b)(2), because a substantial portion of the acts and omissions giving rise to Plaintiffs' claims occurred in this district. Venue

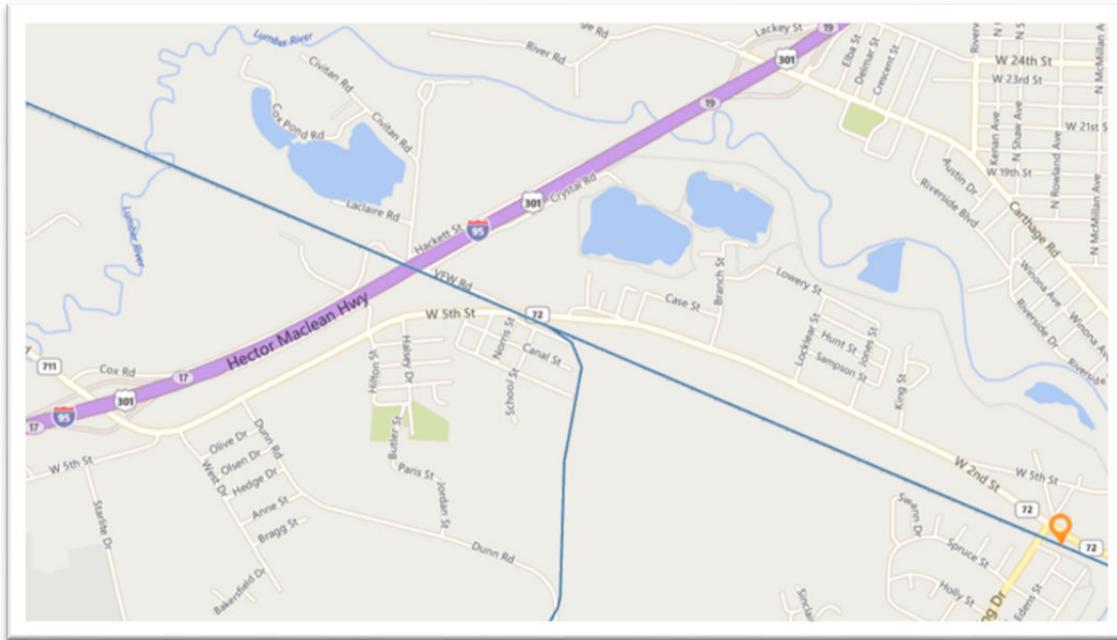
is also proper because all of the property that is the subject of this action is situated in this district.

FACTUAL ALLEGATIONS

21. For over forty years, there has been a levee along the Lumber River as it passes through Lumberton, North Carolina. The purpose of the levee is flood control. For all of that time, the tracks of CSX and its predecessor, the Seaboard Coast Line, created a singular gap in that levee. However, at the same time, CSX has been contractually obligated to permit the temporary and permanent closures of its gap to prevent floods. Nonetheless, CSX has done nothing to deal with the flood hazard its tracks cause—and in fact, it has threatened local officials with trespass and lawsuits when they tried to deal with those hazards, as their contract allowed. CSX's actions and inactions caused flooding in Lumberton that otherwise would not have occurred. The results were catastrophic.

22. Some history of the Lumberton region is helpful in explaining the lay of the land. The Lumber River flows from northwest to southeast. Paralleling the river, VFW Road lies to the south of the river, and runs northwest to southeast. Just south of VFW Road lies the CSX tracks, also running northwest to southeast. In 1964, an overpass for I-95, passing from the southwest to the northeast, was built over the tracks, VFW Road, and the river. The main body of I-95 lies on an elevated berm. Finally, in 1977, the local drainage district built the levee between the CSX tracks and the river.

23. Here is a general map of the region:



On this map, I-95 is purple; the CSX tracks are blue; and the levee roughly follows the thin grey line south of the river, on the right half of the map.

24. The levee ties into the elevated Interstate like a T. Both lines of the T—I-95 and the levee—protect against floods because both are elevated structures. At the upper left elbow of the T is the spot where CSX's tracks pass through at a dangerously low level—much lower than the levee, and low enough to act as a drain or funnel, pulling in floodwaters that have collected on the wet, northwest side of I-95, through the gap, and into Lumberton and into Plaintiffs' homes and businesses.

25. After Hurricane Matthew, the State hired a consulting firm that depicted this “funnel effect.” Its diagram follows.

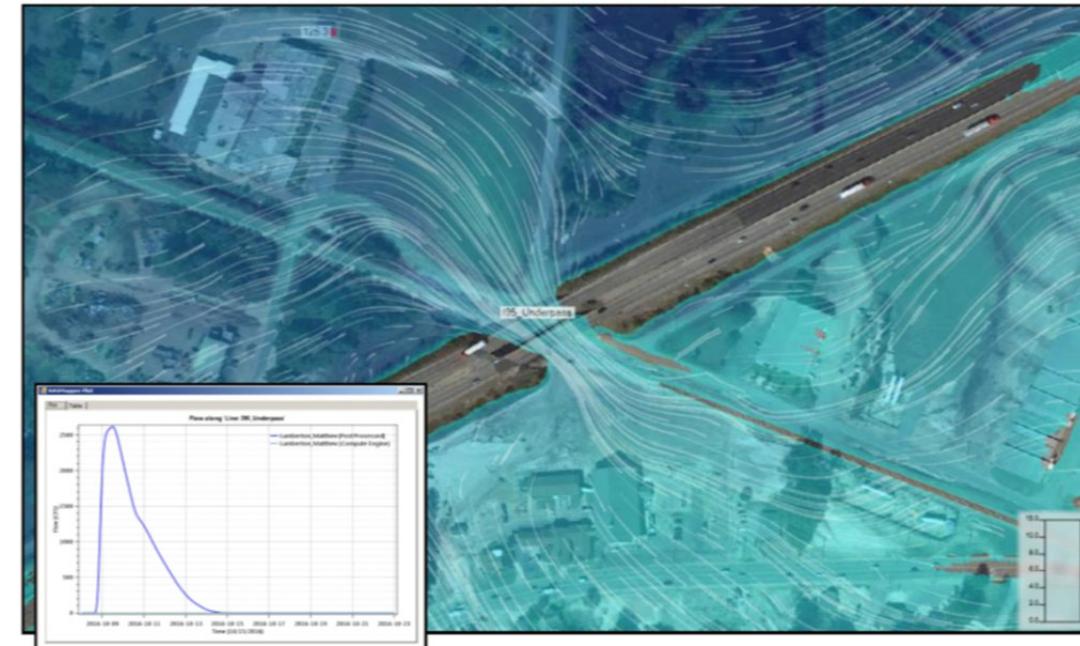


Figure 4-8: 2-Dimensional Hydraulic Model Representation of VFW Road and CSX Railroad Underpass during Hurricane Matthew

In this image, I-95 is the highway slicing to the northeast, the CSX tracks are the stark line running to the southeast, and at the center of the image is the CSX gap: the place where, after two consecutive hurricanes, millions of gallons of water have flooded south into town.

26. The image above shows an analysis of Hurricane Matthew in 2016, during and after which Lumberton suffered grievous devastation. The potential of flooding at this spot was foreseeably obvious. In fact, flooding was expressly contemplated in 1978, when CSX’s predecessor entered into a “Tri-Party Agreement” wherein the railroad agreed to let others block its line at the gap. This agreement will be discussed in detail below.

27. Hurricane Matthew could not have given CSX a more compelling demonstration of the damage that its gap in the levee system could cause. Yet, CSX still failed to do anything

about it. CSX refused to work with the City and other governmental bodies to take steps—such as building a long-recommended floodgate—to ensure that the flooding resulting from Hurricane Matthew was not repeated.

28. Man is doomed to repeat his mistakes until he learns his lesson. And, as Hurricane Florence approached Lumberton in September 2018, CSX forbade local officials from temporarily closing the gap to block the impending floodwaters, even threatening prosecution—despite the fact CSX was fully aware of the likely potential of another catastrophe. After Hurricane Florence arrived on or about September 10, 2018, and for days after, the City of Lumberton again experienced devastating flooding. Once again, numerous homes, businesses, and vehicles in South Lumberton and West Lumberton were damaged or destroyed by water which poured through the same CSX gap.

29. The result of all this is that the City has now twice experienced extensive flooding, damage, and the displacement of hundreds of residents—one of the poorest populations in one of the least economically developed parts of North Carolina. For decades, CSX has disregarded and ignored the clear risks of its operations in Lumberton.

A. CSX's corporate history and the history of railroad operations through Lumberton.

30. CSX's present-day operations trace back to legislative charters granted in the 1800's. These charters make clear that CSX operates as a quasi-public corporation, possessing the special powers and subject to the special duties of a railroad corporation in North Carolina.

31. The North Carolina legislature granted a charter to the Wilmington and Charlotte Railroad Company on February 13, 1855. Ch. 225, N.C. Priv. L. (1855). The next day, the name was changed to the Wilmington, Charlotte & Rutherford Railroad (WC&R). Ch. 226, N.C. Priv.

L. (1855). Under the charter, the railroad was granted 100 feet of right of way on each side of its centerline. Ch. 225, § 27.

32. The railroad began on the coast, at Wilmington, and was constructed westward. By 1861, the railroad had reached Lumberton.

33. The WC&R failed, and was sold at foreclosure to the Carolina Central Railway on April 10, 1873.

34. In 1876, the Carolina Central Railway went into receivership, and on May 31, 1880, it was sold at foreclosure to be reorganized as the Carolina Central Railroad (CCR).

35. In 1881, the Carolina Central Railroad's controlling interest was sold, and the CCR informally became part of the Sea-Board Air Line system.

36. In 1900, the Sea-Board Air Line Railway took over the CCR.

37. During the 1960's, Seaboard's successor company completed a merger with the Atlantic Coast Line and emerged as the Seaboard Coast Line Railroad Company.

38. In 1982, the Seaboard Coast Line Railroad Company was merged with the Louisville & Nashville road into a new company, the Seaboard System Railroad.

39. In 1986, the Seaboard System Railroad merged into present-day CSX.

40. CSX owns the tracks running through Lumberton.

41. CSX also owns the right-of-way over which the tracks run.

42. As a result of the merger, CSX assumed all of Seaboard Coast Line's legal duties, responsibilities, and liabilities. CSX stands in the shoes of the Seaboard Coast Line Railroad Company today.

43. CSX has derived and continues to derive economic advantage from the operation of its railroad tracks in the area of the I-95 underpass.

B. 1960's and 1970's: The levee system is built to protect Lumberton from further floods, and CSX makes promises to the City of Lumberton to cooperate.

44. The north side of Lumberton, where downtown is, is elevated somewhat and is thus relatively safe from the Lumber River.

45. However, the south and west sides, where Plaintiffs are located, are lower-lying ground, and more vulnerable to floods. So, during the 1960's, federal, state, and local authorities came together to plan for a levee system that would protect the south and west sides of Lumberton.

46. In 1966, the federal Natural Resources Conservation Service finalized the Jacob Swamp Watershed Improvement Plan.

47. The plan called for a number of projects, including constructing a levee system along the Lumber River.

48. In the 1960's, the State of North Carolina created the entity known as the Robeson County Drainage District No. One (hereafter just "Drainage District").

49. In 1966, the City and the Drainage District signed a "Watershed Work Plan Agreement" (hereafter just "Work Plan"). *Id.* at i-iv.

50. Under the Work Plan, the City of Lumberton agreed to acquire any land, easements or rights-of-ways that were necessary to install, operate and maintain a levee and appurtenant features. *Id.*

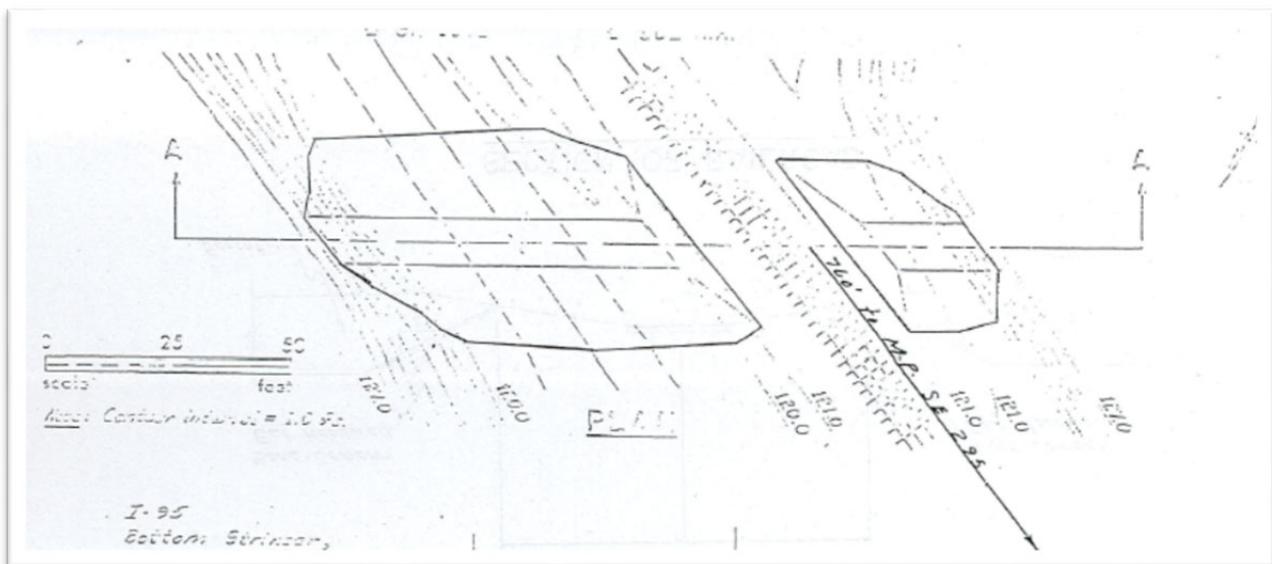
51. Construction of the levee began in 1975. The earthen levee was completed in 1977.

52. Although the levee along the river was complete in 1977, the gap under I-95, through which the Seaboard Coast Line tracks passed, still remained.

53. So, the City of Lumberton, the Drainage District, and the Seaboard Coast Line Railroad Company negotiated and signed a “Tri-Party Agreement” dated June 14, 1978. (Ex. 1.)

54. Under the Tri-Party Agreement, the Seaboard Coast Line granted the City and the Drainage District the right to construct a permanent levee system across Seaboard’s wide right of way. *Id.* at preamble. Specifically, the governments were permitted to “construct and maintain portions of a[n] . . . earthen dike on the easterly and westerly portions of [Seaboard’s] right of way.” *Id.* The governments were permitted to build as close as “15 feet from the center line of [Seaboard’s] main track.” *Id.*

55. The construction authorized in the Tri-Party Agreement appears like this:



(Ex. 1.)

56. Thus, the Tri-Party Agreement, drafted with Seaboard’s involvement and signed by Seaboard’s hand, specifically contemplated that even after constructing the partial structures

more than 15 feet out from the centerline, the narrower “gap” would remain. And Seaboard played a role in specifying how wide that gap would be.

57. To deal with the inevitability of flooding at the gap, the Tri-Party Agreement included provisions concerning emergency situations. Specifically, Seaboard gave the City the right to block the gap “in the event the City of Lumberton is in eminent [sic] danger of flood.” *Id.* ¶ 8(a). The City was given “the right and privilege of closing said dike across said track and the roadbed thereof.” *Id.* In other words, the City got the right to close part of the gap—that part more than 15 feet from Seaboard’s centerline—to prevent imminent flooding.

58. Under the agreement, Seaboard agreed to permit the City to close the remaining gap (within 15 feet on each side of the centerline) whenever given “12 hours notice prior to such closing.” *Id.*

59. The Tri-Party Agreement was duly signed by all three parties and remains in effect today.

60. CSX, in acquiring Seaboard, acquired its rights, duties, and obligations under the Tri-Party Agreement.

61. CSX has done nothing to cancel or repudiate the Tri-Party Agreement.

62. The Tri-Party Agreement, and specifically the provision regarding closure of the gap, was intended for the benefit of City residents.

63. In October 1979, in furtherance of its powers under the Tri-Party Agreement, the City of Lumberton prepared “Operational Procedures” for “Sandbagging Seaboard Coast Line Railroad.” (Ex. 2.)

64. In these procedures, the City stated its intent “to affirm beyond any shadow of doubt that the protection of lives and property during times of flooding is a paramount concern of the City of Lumberton.” *Id.* § I.

65. The procedures recounted that in connection with levee construction, “appropriate agreements were reached with the Seaboard Coast Line Railroad permitting sandbagging.” *Id.* The procedures also recited the requirement of twelve hours’ notice to the railroad, consistent with the Tri-Party Agreement. *Id.* § II(8).

66. In the years following the Tri-Party Agreement, the City had a version of its procedures for closing the gap pinned up on a board in the Public Works Department.

67. During the negotiations over the levee construction, all parties concerned—the City, the Drainage District, Seaboard, the Soil Conservation Service, and the Army Corps of Engineers—were aware of the need to block the gap at the Seaboard/CSX tracks.

68. A letter dated December 12, 1977 from the Army Corps of Engineers to the Soil Conservation Service is instructive. It notes that at an October 27, 1977 meeting, “there was a discussion concerning additional project features which would reduce or eliminate inflow into the diked area, such as . . . a gated structure at the railroad underpass.” This meeting was held *prior* to the negotiation and signing of the Tri-Party Agreement.

69. Indeed, in this same time period, Seaboard also agreed to construction of a permanent floodgate at the gap.

70. In 2017, the North Carolina Division of Emergency Management, a state agency, commissioned a report to study the problems with flooding in Lumberton. The agency hired AECOM Technical Services of North Carolina, Inc. (“AECOM”), which released its report in

September 2017. The report was titled *Hurricane Matthew: Sources of Flooding and Mitigation Strategies in Lumberton, NC.*

71. This report stated that closing the underpass was part of the original plan for the area. It also noted that “[a]greements were reached between all parties but the permanent improvements were not made.”

72. The report stated that the temporary sandbagging plan, set out in the Tri-Party Agreement, was agreed to “as an alternative” to the permanent closure.

73. In other words, the temporary plan is literally a stopgap measure until the permanent fix could be built. Seaboard had agreed to both temporary and permanent measures.

C. 1970's to present: CSX always knows of the danger of its gap in the levee system, but does nothing to remedy the problem.

74. Initially, the Lumberton levee system was certified as a sufficient means of protection for people in the areas west and south of the CSX gap.

75. However, the Federal Emergency Management Agency and the State of North Carolina's Flood Mapping Program reconsidered this designation of flood protection based on the still-extant gap at the CSX tracks.

76. According to meeting minutes from May 21, 2003, these agencies (along with some consultants) noted that permanent improvements to the CSX gap area were contemplated and designed in 1977. “The roadway was supposed to have been raised . . . and the areas between the road and south of the railroad were to have been blocked by permanent levees.” *Id.*

77. This shows that CSX knew, back in 1977, that its gap posed a risk of harm to the City of Lumberton.

78. CSX continued to engage in communications with the City about the gap over the years.

79. During a storm that threatened to approach the region sometime between 2006 and 2010, CSX's roadmaster was Robert Grooms. The City made contact with Mr. Grooms and asked him to consent to a closure of the gap using sandbags. The storm changed course and the City did not follow up on the plan to close the gap.

80. During a storm in a subsequent year, CSX's roadmaster was Mike Small. Mr. Small denied being familiar with the Tri-Party Agreement or CSX's consent to sandbagging the gap. Mr. Small told the City's representatives that if they attempted to sandbag the line, that would constitute trespassing, because no one is supposed to enter onto CSX property. Again, the storm changed course before the City had to press the issue.

81. Over the years, studies have shown that the CSX gap is a significant risk and the biggest contributor to flooding in the area.

82. The 2017 AECOM report is one such study.

83. In preparing this report, AECOM drew on hydrological data; Army Corps of Engineers trip reports; interviews, photos, and assessments from residents; the original levee construction documents; the agreements between the City of Lumberton, the Drainage District, and Seaboard Coast Line; and other information. AECOM's charge was to determine what caused flooding after 2016's Hurricane Matthew, and how to prevent it in the future.

84. Unsurprisingly, AECOM identified the CSX gap as a principal source of flooding.

AECOM estimated that, in the aftermath of Hurricane Matthew, as much as 1,250 ft³/second of water was flowing into the area "through the railroad opening." *Id.* at 8.

85. Hurricane Matthew began affecting Lumberton on October 8, 2016. But AECOM noted that even on October 13, three days after the flood's high-water mark, water was still flowing across the railroad area. *Id.* at 9.

86. AECOM made findings as to the cause of the flooding after Hurricane Matthew. AECOM wrote that *the* "overriding factor that caused the majority of the devastation was the failure to have a proper closure at the VFW Road underpass." *Id.* at 12. This includes the CSX tracks.

87. AECOM said that, without any mitigation strategy, "the first point of failure in the levee system protecting the project area will be the underpass" where the CSX tracks lie. *Id.* at 13.

88. The consultants made recommendations to prevent future flooding of the City. The primary recommendation was the installation of a floodgate at the gap, across the CSX tracks and VFW Road. *Id.* at 14. AECOM noted that its proposed solution would comply with railway industry engineering standard practices. *Id.*

89. AECOM calculated that its proposal would cost \$486,500, and that during a 1% annual chance flood, it would avert over \$5 million in direct and indirect losses. *Id.* at 18.

90. Another public study that cited the CSX gap as the cause of flooding in Lumberton was titled *Hurricane Matthew Resilient Redevelopment Plan: Robeson County*. It was published in May 2017 under the supervision of the North Carolina Division of Emergency Management.

91. The Redevelopment Plan stated that most of the flooded homes were flooded with water that came through the CSX gap.

92. The Plan also concluded that without a floodgate at the I-95 underpass, the community was at risk of suffering similar flooding events in the future.

93. The North Carolina Division of Emergency Management and the North Carolina Department of Transportation also commissioned a second study from AECOM. This second study was dated May 1, 2018, and titled *Lumber River Basin Flood Analysis and Mitigation Strategies Study*.

94. In this study, AECOM analyzed the broader Lumber River basin rather than just the Lumberton area.

95. Once again, the consultants made clear that the CSX gap was the cause of “drastic flooding in the interior of the levee.”

96. AECOM determined that, had a floodgate across the gap been in place, \$46,581,000 in direct damage and \$198,715,566 in indirect damage would have been averted in the broader Lumber Basin.

D. 2016: The CSX gap’s predictable impact on Plaintiffs and class members during and after Hurricane Matthew.

97. On October 8, 2016, Hurricane Matthew made landfall near McClellanville, South Carolina, and began churning up the coast.

98. Thus, it was obvious that the City of Lumberton could be at risk of flooding.

99. The City sought to construct an emergency sandbag dam at the CSX gap and contacted the railroad.

100. CSX did not respond to this request.

101. The City made a small effort to construct a sandbag dam in the low ditch alongside the tracks, but without permission to construct a proper barrier *across* the tracks, this effort was not likely to accomplish anything. This first attempt of the City failed.

102. Facing waters that continued to rise, City officials came up with a second plan. The City sought to use construction equipment, jersey barriers, and other materials to block the gap itself.

103. Because CSX had not even responded to its first request, the City sought help from the State to get CSX's attention.

104. CSX responded to the State's request, to say that it would not permit anyone to block its line.

105. The State communicated CSX's denial of access back to the City of Lumberton.

106. As a result, the City was unable to take any meaningful action to protect its residents and businesses.

107. The rising waters finally reached the gap. In the early hours of October 10, millions of gallons of floodwater began coursing through the CSX gap and into Plaintiffs' homes and businesses.

108. The catastrophic flooding in Lumberton resulted in more than 1,500 people being displaced for months, 2,367 structures being damaged, and \$257,574,000 in damage.

109. Much of the flooded part of the City was navigable only by boat.

110. The Lumberton water treatment plant was also flooded, shutting down the municipal water supply for weeks.

111. The City of Lumberton's main levee system held; *it* was not breached. Thus, the overall flood protection system would have worked, and would have saved the town, if only the CSX gap had not been open.

112. AECOM found that "the major contributing factor to the devastation was the inflow of floodwater" at the CSX gap.

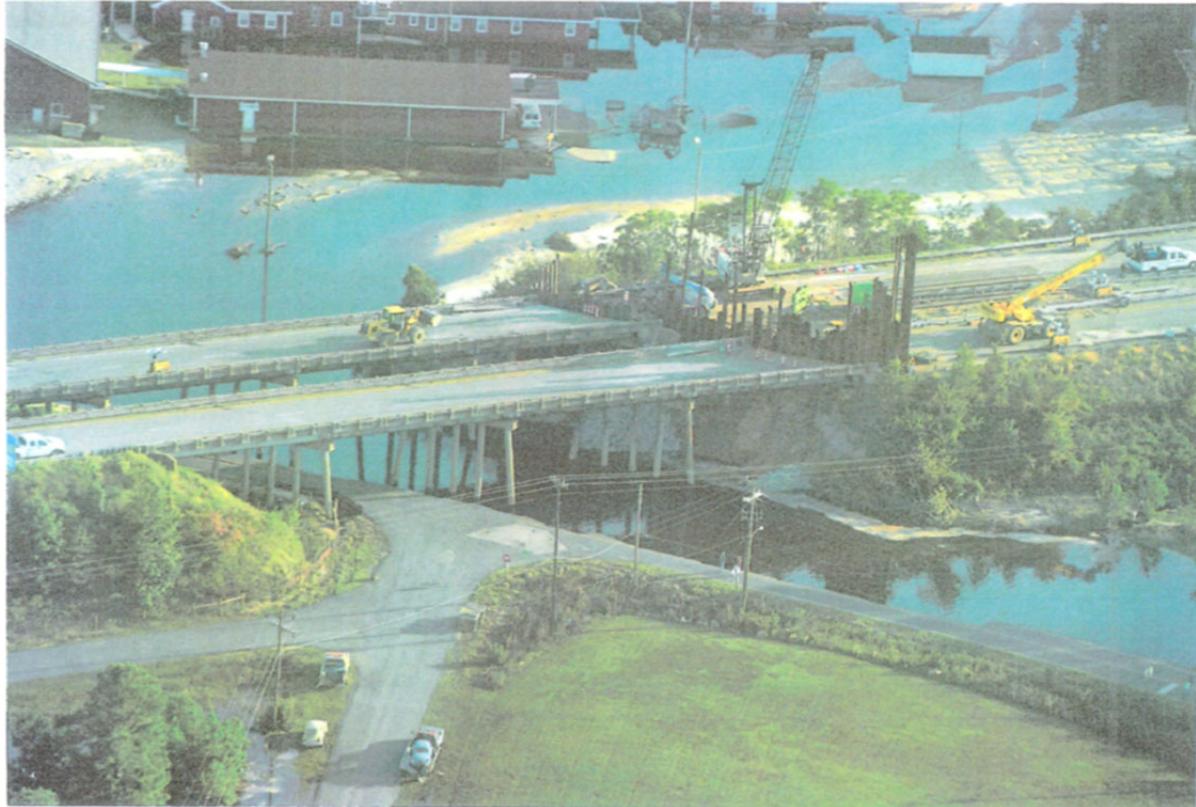
113. Aerial images taken on October 16, 2016 show how the floodwaters passed through the gap and left perceptible deposits on the land. The image below is from the 2017 AECOM report:



Figure 9: Deposits Mark Path of Flow to South of Railroad and North of VFW Road

E. 2016: After Matthew, CSX rebuilt its own property using materials that made the flood risk even worse for the residents of Lumberton.

114. The torrent caused when Hurricane Matthew's waters rushed through the CSX gap was very destructive. In fact, the waters were so powerful that they washed out the CSX trackbed and its subgrade, and part of the I-95 bridge abutment as well. The photo below shows, from right to left: the erosion to the highway abutment; the CSX tracks being completely submerged; and VFW Road, partially submerged.



I-95 & VFW ROAD (RR CROSSING)

115. Moving water carries force, but still waters do not. Had the waters been held back, the damage to the CSX line and the highway bridge would not have occurred.

116. In rebuilding its property, CSX significantly changed the composition of its trackbed and subgrade.

117. Whereas the old trackbed had been a impermeable berm of solid earth, the new bed was constructed with large aggregate (rocks).

118. Water can flow under and through the spaces between these large rocks.

119. The segment of trackbed rebuilt after Hurricane Matthew was therefore much more permeable and porous than before.

120. Accordingly, the newly rebuilt CSX line actually worsened the risk and intensity of a future flood at the same spot.

121. The Tri-Party Agreement expressly considered that the CSX property would serve as an integral part of the flood control system the City and the Drainage District were constructing.

122. But CSX did not advise the City or the Drainage District, its counterparties, of this change in a material assumption of the Tri-Party Agreement.

123. This problem would only become apparent to the City during 2018's Hurricane Florence when it was too late. Text messages sent by the City of Lumberton's Public Works Director show that the City was very concerned: "No matter what temporary system we use none will totally seal off[f] the porous rock below the tracks."

124. CSX's actions here were egregious. Rather than building a permanent solution, as it had promised to do, when CSX had the chance to rebuild its tracks, it made the problem worse.

F. 2017: As Hurricane Irma approaches, CSX refuses the City of Lumberton's pleas to close the gap.

125. In early September 2017, Hurricane Irma was raking the north coast of Cuba and was forecast to hit the Florida peninsula, then track northeast toward North Carolina.

126. Fearing a repeat of the Matthew devastation, the City of Lumberton's Public Works Director Rob Armstrong made a formal request to CSX to permit the city to sandbag across the CSX gap.

127. At this time, CSX's roadmaster was Todd Meineke. Mr. Meineke said he would pass the request up the chain of command.

128. In a voicemail left on September 6, 2017, Mr. Meineke stated: "I talked with Troy [Creasy, CSX Project Manager] and I spoke with my boss. Troy says we don't actually—they can't find and don't have a copy of . . . an executed agreement for that sandbagging. . . . anyways, running that by our Division Engineer, um, he said no. I sent him the pictures and everything, um, but he said, he's not going to allow, um, the [unclear] be sandbagged. So, anyways, I hope that doesn't—hopefully that storm doesn't end up hurting us. . . . No, they're not going to allow that, we don't have an agreement in place that's been executed that shows that we are obligated to do that, so therefore, we're not going to."

129. On September 8, 2017, the City Manager of Lumberton wrote a letter to Mr. Creasy, to memorialize CSX's oral denial. He also told Mr. Creasy, "The issue of protective closure of this opening under the levee during hurricane events, to protect the citizens of Lumberton, is a major concern of our Mayor and City Council."

130. Despite the City's pleas, CSX continued to operate its line as usual, and did nothing to remedy the problem with its gap in the flood structures.

131. CSX did not even respond to the letter.

132. In other communications, Mr. Creasy acknowledged the possibility of constructing a permanent floodgate. Mr. Creasy, who worked in Richmond, Virginia, pointed out that rail floodgates are common, and even identified CSX gates in the Richmond area.

G. 2018: As Hurricane Florence approaches, CSX threatens legal action and refuses to allow anyone to close its gap. Plaintiffs and class members are hit again.

133. Hurricane Florence developed in the Atlantic Ocean during September 2018 and began threatening the Atlantic Coast.

134. Early in the month of September 2018, Lumberton city officials requested permission from CSX to build a sandbag berm across the tracks, filling the CSX gap, to prevent flooding.

135. Once again, CSX denied these requests.

136. While doing so, CSX again failed to disclose that its changes to its own trackbed meant that sandbagging would no longer work and that the CSX tracks were even less useful for flood control than before.

137. Mr. Meineke, the roadmaster who had denied the City's requests the year before, told the City not to go onto CSX property, because that would constitute trespassing.

138. Mr. Meineke also told the City that "anything that alters the rail could be a felony."

139. On September 9, the City's Public Works Director Rob Armstrong sent a text message to Wayne Horne, the City Manager, in which he wrote: "1) CSX has forbidden us to place anything over the tracks with the threat of felony trespassing. We really need to get someone higher up, maybe mayor, to plead with CSX to allow us to install temporary closure."

140. After the storm, Brandon Love, Lumberton's Deputy Mayor, was interviewed by NBC News regarding CSX's conduct. Based on its interview of Love, NBC reported that "CSX had threatened to sue anyone who tried to place sandbags across the underpass." NBC also said Love had indicated that "CSX did not show up to meetings to discuss the building of a floodgate to protect that part of the city . . . despite promises that it would."

141. In the same article, Bruce Davis, the Mayor of Lumberton, was quoted as saying: "The holdup is that we don't have permission from the railroad to get on that property and do anything." He went on to say, in NBC's paraphrasing, that "city officials have been told multiple times that CSX would consider anyone attempting to stem the flooding from the underpass as a trespasser."

142. In later news reports, Governor Cooper's spokesman Ford Porter was reported as having written that "CSX officials who were contacted did not consent to allowing for sandbagging of the tracks, arguing that there was no proof that it would work."

143. CSX officials admitted that CSX denied permission to close the line, but claimed that its denial was so that emergency relief supplies could be moved into the hurricane-threatened area.

144. However, North Carolina Department of Transportation records show that CSX officially closed its railroad line on September 13. On this date, the City still did not have permission from CSX to build a temporary berm, and City leaders were desperate.

145. Ultimately, Lumberton city leaders were forced to petition North Carolina Governor Roy Cooper to intervene and allow sandbags to be placed across the CSX railway underpass.

146. Acting through his emergency powers, Governor Cooper personally ordered that construction of a temporary berm across the CSX gap could take place.

147. City leaders learned of the decision on the morning of September 14, 2018.

148. Only after the Governor's declaration did the construction begin. As City Councilman John Cantey, Jr. stated bluntly, "We were really stuck in a barrel. The water's coming. We can't stop it."

149. At no point before the Governor issued his declaration did CSX agree to allow the construction of the temporary berm. In fact, even after the declaration, CSX personnel appeared at the site and demanded written proof of the Governor's order before allowing access.

150. Finally, an army of volunteers, government workers, and the National Guard gathered in a church parking lot, and as Hurricane Florence struck Lumberton, they filled 5,000 sandbags in tropical force winds while being pelted with rain. The sandbags were then used to construct a temporary berm and buy time for Lumberton residents.

151. The sandbagged berm did hold back the floodwaters for a few days, allowing some residents to move their property and themselves out of the area.

152. Unfortunately, the berm broke around 2:00 p.m. on September 17, 2018.

153. When the sandbag berm gave way, the Lumber River poured through the CSX gap and flooded western and southern Lumberton, just as it had two years earlier during Hurricane Matthew, and just as had been foreseen in the 1978 Tri-Party Agreement.

154. A particularly sad part of this story is the City's response in the face of CSX's denials and threats. These actions cost the City precious time: the water was rising; every hour of delay meant that much less time to take effective actions.

155. Because the City had seen flooding after Hurricane Matthew, and because the City did not have permission to block the CSX gap to protect this entire area of town, the City's crews turned to their alternate strategy: attempting to build a berm just around the City's water plant. At least this way, the water supply would not have been affected.

156. The efforts to protect the water plant during Hurricane Florence were successful. The City built a berm around it that held.

157. But this just shows that the City was prepared to take action, and could have taken action at the CSX gap, a much higher priority, if CSX had not threatened legal action. The City could have protected the Plaintiffs and the proposed class members, rather than just the water plant.

H. Even after Hurricane Matthew, CSX refused to join government efforts to solve the problem.

158. Even though CSX was fully aware of the danger posed by its gap, according to reports by local governmental officials to the media, CSX had not participated in discussions after Hurricane Matthew about how to mitigate future flooding disasters.

159. One government official reported that CSX slowed the process of construction of any floodgate despite the willingness of the North Carolina Division of Emergency Management and the Golden LEAF Foundation to fully fund the estimated cost.

160. In fact, although CSX had promised to attend an August 2018 meeting in Raleigh about the problem—a month before the city was flooded by Hurricane Florence—the railroad rescinded its promise the day of the meeting.

161. CSX's only public explanation for its nonparticipation in discussions to address the flooding risk has been that the governmental plans have not been clear enough—an

explanation revealing that CSX was abdicating responsibility for resolving the serious flooding problem it causes, and was not working to address the issue.

162. A CSX spokesperson indicated to the press only that a company vice president had been planning prior to Hurricane Florence to *begin* conversations with Lumberton officials in October 2018—when the hurricane season is virtually over.

I. Plaintiffs suffered significant damages from Matthew and Florence, and continue to be at risk of a future flood today.

163. Due to extensive flooding and mandatory evacuations, Plaintiffs and proposed class members were devastated by the loss of their homes and businesses.

164. The flooding through the CSX gap caused devastating economic damage, which has not been repaired or adequately compensated for.

165. Businesses have lost and continue to lose income, and property owners have suffered loss, damage, and diminution of the value of their properties.

166. All Plaintiffs suffered significant loss and damage during floods after Hurricanes Matthew and Florence. In each case, the total value of property damage and incidental expenses exceeded \$75,000.

167. Plaintiff Jimmy Edwards owns a house that was heavily damaged during Hurricane Matthew in 2016. The house took on about four feet of water; the floors warped and the cabinets were destroyed. All of the furniture and appliances had to be thrown out, as well as thousands of dollars' worth of tools and a golf cart. Mr. Edwards moved to another house in Lumberton, and in 2018, his damaged house was flooded again.

168. Plaintiffs Robert Hunt and Dolores Hunt have lived in their house for 32 years. The house was damaged by floodwaters in 2016's Hurricane Matthew and declared to be a total

loss. They renovated this house to be livable again. Unfortunately, in 2018, it was flooded again after Hurricane Florence. In both events, the interior needed to be replaced: floors, walls, and furnishings. They suffered significant expenses. After the flood in 2018, the house grew significant mold, which is not believed to be reparable.

169. Plaintiffs Clifford McKellar, Jr. and Emma McKellar own their house in Lumberton and have done so for fifty years. The floods after Hurricane Matthew damaged the house—the floors, the insulation, roof, and doors. They also destroyed a car. After Hurricane Florence, the McKellars' house was flooded again. The house had to be dried, the insulation had to be removed and replaced again, and carpets and appliances were ruined. The McKellars had to stay in a hotel for eight days while the work was being done, too.

170. Plaintiff Antoinette Moore suffered losses in both storms also. After Hurricane Matthew, she was out of her home for two months while it was rebuilt. The home was put right by early 2017, but tragically flooded a second time in the aftermath of Hurricane Florence. She was not able to live there for another week. Her HVAC equipment was destroyed and it took a month to replace. Now, her homeowners insurer has refused to renew her policy due to her history of repeat losses. She believes that this company also has refused to renew her neighbors' policies.

171. Plaintiff West Lumberton Baptist Church flooded during Hurricane Matthew. The Church suffered \$1.3 million in damage, which included destruction of the sanctuary, parsonage, and education buildings. Other buildings that were part of the Church had all of their interior furnishings destroyed and required substantial repair. The Church also had to rebuild two parking lots due to the flooding. During Hurricane Florence, the church and classrooms and

fellowship buildings all sustained extensive damage from flooding, while one of the parking lots was again destroyed. Estimated damages from Hurricane Florence are \$800,000 to \$1,000,000.

172. Plaintiff Currie Chain Saw, Inc. is a Honda dealership. During Hurricane Matthew, Currie Chain Saw lost \$2 million in inventory. Flooding also caused substantial damage to the exterior of three buildings. Inside those buildings, one had 33 inches of floodwater, another had 30 inches of floodwater, and a third had 18 inches of floodwater. One of the buildings required a complete tear-out of all drywall and paneling. During Hurricane Florence, floodwaters again invaded the business's buildings, requiring substantial cleanup.

173. Plaintiff C.J.M. Ventures, Inc. also flooded during Hurricane Matthew. The flood left three to four feet of water in the building and destroyed its inventory, including ATVs, UTVs, and motorcycles. The building itself had to be gutted. During Hurricane Florence, floodwaters covered the land, although the water did not enter the building this time.

174. Plaintiff William Locklear does business as Strickland's Barbershop. As a result of flooding during Hurricane Matthew, the Barbershop sustained damage to its building and equipment, resulting in closure of the business for approximately seven months. With Hurricane Florence, floodwaters damaged cabinets and equipment.

175. Plaintiff TBL Environmental Laboratory, Inc. was forced to close for more than three months as a result of flood damage after Hurricane Matthew. The land was flooded with two feet of water while 16 inches was inside the business, extensively damaging flooring, sheetrock, equipment, records, and supplies and requiring mold remediation. Floodwaters from Hurricane Florence again covered the property and entered TBL's building causing closure of

the business for an extended time due to damage to the interior of the building, including damage again to the flooring, sheetrock, and records, and the need for additional mold remediation.

176. Plaintiff Sammy's Auto Sales, Inc. flooded during Hurricane Matthew. Its building had five and a half feet of water in the office, and shops that the company leased out were also under water. The company suffered extensive damage to the building, equipment, and cars. The business was closed for five weeks and also lost rent. The flooding from Hurricane Florence resulted in flooding to a level of one to two feet and substantial damage to the interior of the buildings. Shops leasing from Sammy's Auto Sales lost inventory and business.

177. Plaintiff Linda Sampson is a homeowner. During both Hurricanes Matthew and Florence, floodwaters covered her property and ran under her home.

178. Plaintiff Eric Chavis is a homeowner. As a result of flooding over his property during Hurricane Matthew, he sustained substantial damage to insulation, ductwork, the air conditioning unit, and a water heater. During Hurricane Florence, his property again flooded, and he sustained damage to the air conditioning unit, insulation, ductwork, a generator, and a truck.

179. As will be set forth later, the proposed class members are City property owners and businesses who suffered losses similar to Plaintiffs'.

180. Unfortunately, all Plaintiffs and proposed class members *continue* to be at risk of future flooding events as a direct result of the CSX gap.

J. A permanent fix to the CSX gap was feasible, was recommended for decades, and would have prevented Plaintiffs' catastrophic losses.

181. As discussed, in the 1970's, CSX's predecessor agreed to allow temporary sandbagging across its line as well as a permanent fix to the problem of the gap in the levee defenses.

182. The proposal to fix the gap thus has been a matter of public record for forty years.

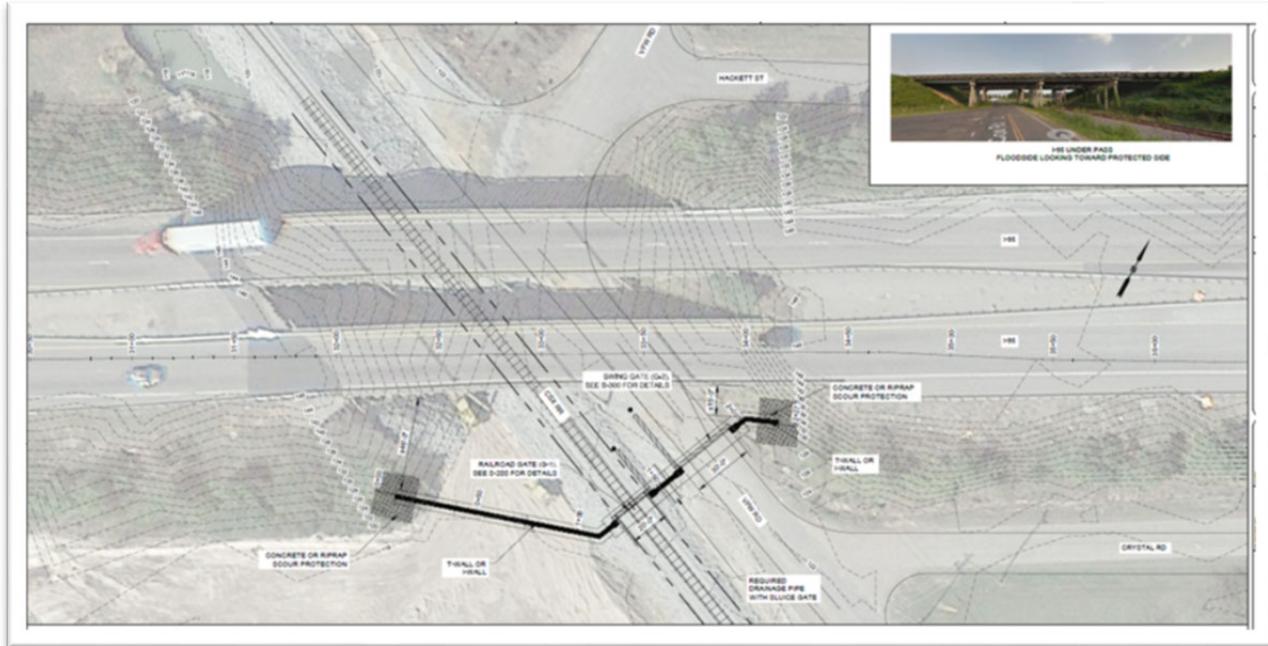
183. CSX has been on actual notice of a need to fix the gap since at least 1978.

184. A floodgate is a relatively simple solution to the problem. In the 2017 AECOM report, the consultants produced technical diagrams and renderings showing how a floodgate might look, and described how it would operate. This is a rendering of the visual appearance of the floodgate. The CSX tracks are on the left side of the image.



Figure 11: View of Flood Gate from VFW Road Looking North Toward I-95

185. Below is an overhead view from the same report, showing where such a structure could have been placed. The dark horizontal line shows the structure from the rendering in the previous paragraph.



(Ex. 3.)

186. The installation of a permanent floodgate like this would not impede CSX's railroad operations, nor would it be a burden on railroading in any way.

187. A permanent floodgate would operate only when there is an impending flood. Such a flood would be so severe as to completely disable CSX's line, rendering it unusable to CSX for any purpose.

188. For example, the U.S. Army Corps of Engineers took the following picture on October 11, 2016, after Hurricane Matthew. The picture shows CSX's line submerged by the same floodwaters that affected Plaintiffs and the proposed class.



Figure 7: Water flows south from VFW Road Underpass Washing Out Railroad and Overtopping VFW Road

189. CSX itself recognizes the need for floodgates and the feasibility of operating such structures.

190. In fact, *CSX maintains floodgates at other points in its system*. For example, CSX has a floodgate in Orleans Parish, Louisiana. And as discussed above, its own Division Engineer for the line in Lumberton pointed out that CSX has floodgates on its system in the Richmond area.

191. In short, rather than burdening or impeding CSX's rail operations, a floodgate would actually protect them, and such a solution certainly was feasible in Lumberton.

K. CSX controls access to the entire gap under I-95.

192. When the railroad was first built, CSX's predecessor was granted a right-of-way 100 feet on each side of the centerline of its tracks.

193. The entire distance from bridge abutment to bridge abutment under I-95 is less than this, meaning that CSX's right of way is contiguous with the entire I-95 gap.

194. VFW Road runs parallel to the CSX tracks, over the CSX right of way, through the same gap.

195. VFW Road lies entirely on CSX's right of way.

196. Accordingly, in constructing a solution for flooding through its gap, CSX's agreement has been necessary to fix the gap at VFW Road, too.

197. Local authorities have repeatedly blamed CSX for not playing any role in closing its gap. Had CSX decided to fix the problem at its tracks, the City of Lumberton would have cooperated, and would have made any necessary changes to VFW Road's configuration if the end result would be effective flood control.

198. In conclusion, only CSX has prevented a solution to the flooding problem that its gap in the levee system has caused.

CLASS ACTION ALLEGATIONS

199. This action is properly certifiable as a class action under Fed. R. Civ. P. 23. Plaintiffs seek to define two separate classes, and seek certification under Rule 23(b)(2) and 23(b)(3). Plaintiffs also seek certification of a common issues class under Rule 23(c)(4).

A. Class definitions and exclusions

200. Plaintiffs seek certification of the following Classes:

Area Residents Class:

All persons whose real or personal property located in Lumberton, North Carolina was damaged or destroyed due to floods through the gap at the intersection of the CSX railroad tracks and Interstate 95.

Area Business Class:

All businesses in Lumberton, North Carolina that lost income or suffered damage to real or personal property due to floods through the gap at the intersection of the CSX railroad tracks and Interstate 95.

201. Excluded from the Classes are: (a) any Judge or Magistrate Judge presiding over this action, and members of their families; (b) CSX itself, any entity in which CSX has a controlling interest or which has a controlling interest in CSX, and their legal representatives, assigns, and successors; and (c) any class member who excludes himself or herself, or is currently in litigation with CSX over the same matters.

B. Numerosity of the class and impracticability of joinder: Rule 23(a)(1).

202. The Classes consist of hundreds of individuals and businesses who have been economically damaged by flooding caused by the presence of the CSX gap, making joinder impracticable.

203. Class members can be informed of the pendency of this action by print, Internet, and broadcast notice. Further, these consolidated actions against CSX over Lumberton flooding already have received extensive local press coverage.

C. Commonality of facts and applicable law: Rule 23(a)(2).

204. Common questions of law and fact exist as to all members of the Classes.

205. CSX's conduct is governed by North Carolina common law, and each class member's claim will arise under the same law.

206. Furthermore, the factual bases of the claims against CSX are common to all class members. CSX's conduct presents a series of significant factual questions with common answers, including:

- Whether CSX negligently, outrageously, willfully, wantonly, and/or recklessly caused and/or contributed to flooding in Lumberton.
- Whether and when CSX knew or should have known of the risk that its gap would cause or contribute to flooding in Lumberton.
- Whether CSX's failure to build a permanent floodgate before Hurricane Matthew or Hurricane Florence was outrageous, willful, wanton, or reckless.
- Whether CSX's failure to take temporary protective and preventative measures, or in obstructing government officials in their attempts to take the same measures, before Hurricane Matthew or Hurricane Florence was outrageous, grossly negligent, willful, wanton, or reckless.
- Whether the CSX gap constituted and constitutes a nuisance.

207. CSX's pattern of gross negligence and willful, wanton, and reckless indifference for the rights of others was the same as to each class member. Each class member suffered flood-related losses due to the same actions and inactions of CSX.

208. Each class member's claim arises from the same course of planning, decisions, and events; and each class member will make similar legal and factual arguments to prove CSX's liability.

209. Common questions of fact also exist with respect to the punitive damages liability of CSX to the Class, including CSX's outrageous, willful, reckless, and wanton conduct; the

calculation of the amount of punitive damages that may be imposed upon CSX; intra-class equity with respect to the allocation and utilization of punitive damages; and the most practicable and most equitable allocation, disbursement, and utilization of such damages for punishment of CSX's wrongful conduct toward Plaintiffs and class members, including fulfillment of the deterrent policy and purpose of punitive damages.

D. Typicality of Plaintiffs' claims: Rule 23(a)(3).

210. The claims of the Plaintiffs in these consolidated actions are typical of the claims of class members as a whole.

211. The Plaintiffs in these cases are a representative cross section of Lumberton property owners, residents, and business owners.

212. The Plaintiffs here include homeowners who had property damage and who were displaced; business owners who had direct property damage from floodwaters; and business owners who suffered lost income, including lost rents, from flood damage.

213. Plaintiffs also include one nonprofit entity, a church, which had its own significant property damage.

214. The Plaintiffs before the Court are typical of the proposed class members as a whole.

E. Adequacy of representation by Plaintiffs: Rule 23(a)(4).

215. Plaintiffs will fairly and adequately represent and protect the interests of the proposed classes.

216. First of all, Plaintiffs have a direct interest in the outcome of these actions, and will uphold their duty to the proposed classes to see that class members' interests are similarly prosecuted.

217. Further, Plaintiffs have retained counsel with substantial experience in prosecuting complex class actions and mass torts.
218. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Classes and have the financial resources to do so.
219. Neither Plaintiffs nor their counsel have any interests adverse to those of the Class, and neither Plaintiffs nor their counsel have any conflict of interest relating to CSX.

F. Injunctive relief is appropriate: Rule 23(b)(2).

220. CSX has acted or refused to act on grounds that apply to the class generally, so final injunctive relief is appropriate respecting the class as a whole.

221. Specifically, CSX's maintenance of a gap in the City's levee system; its refusal to remedy that gap; its aggressive and threatening stance toward local officials, including threats of lawsuits and prosecutions; and the other actions and inactions described in this complaint, are actions that have affected the class as a whole.

222. Final injunctive relief, in the form of an order requiring CSX to take appropriate action to ensure its gap does not cause a flood again, is appropriate and should be granted by the Court.

G. Predominance of common questions and superiority of class action practice: Rule 23(b)(3).

223. The common issues of fact and law presented in this action, including those specified above, predominate over any questions affecting only individual class members.
224. Fundamentally, all Plaintiffs' claims arise out of a single course of conduct—a chain of decisions and actions made by CSX that caused flooding in Lumberton.

225. Plaintiffs will present common proof with respect to CSX's failure to take reasonable precautions or allow others to do so—proof that is the same for each member of the Class.

226. Plaintiffs' proof of CSX's outrageous, willful, reckless, and wanton conduct will involve the same participants, events, discovery, documents, fact witnesses, and experts. Common questions of fact also predominate concerning the determination of the aggregate quantum of punitive damages necessary to fulfill the punishment and deterrence goals of such damages.

227. A class action is superior to the only other method available for the adjudication of these claims—individual litigation and multiple trials. But repetitive litigation of CSX's conduct by each member of a proposed class would be inefficient, impracticable, economically infeasible, and potentially unfair, particularly in light of the unique context of CSX's course of conduct and its unprecedented impact upon the proposed classes, the economy, and society.

228. It is desirable to concentrate litigation against CSX in a single forum—this Court and in these cases— rather than having those claims heard by multiple judges of this Court or the State courts.

229. Further, it would be very burdensome on the courts to entertain re-litigation of the same facts and legal issues in hundreds of cases. The consideration of common questions of fact and law via this class action will conserve judicial resources and promote a fair and consistent resolution of these claims.

H. Common issues are present: Rule 23(c)(4).

230. Under Fed. R. Civ. P. 23(c)(4), an action may be brought or maintained as a class action with respect to particular issues. Even if the Court finds that a class should not be certified

under Rule 23(b)(3), the Court may and should maintain these cases as class actions because of the presence of common issues.

231. Plaintiffs seek certification as to the common questions regarding (a) CSX's knowledge of the risk of flooding created by its gap, (b) whether Defendant had a duty to take action to eliminate and/or reduce the risk of flooding, (c) whether Defendant negligently failed to take action to eliminate the risk of flooding created by the CSX gap, (d) whether CSX obstructed efforts to protect class members from flooding, and (e) Defendant's liability for damages occurring from flooding.

232. Plaintiffs respectfully maintain that class certification as to these issues is appropriate because certification as to particular issues is superior to any alternative means of adjudication, because it eliminates the possibility of duplicative, inefficient litigation of identical issues. Resolution of these matters would materially advance the litigation.

233. This complaint should be construed so as to incorporate all facts above into each cause of action stated below.

**COUNT 1: THIRD-PARTY BENEFICIARY CLAIM FOR BREACH
OF CONTRACT ARISING FROM CSX'S CONTRACTS
WITH THE CITY OF LUMBERTON AND THE DRAINAGE DISTRICT**

234. The 1978 Tri-Party Agreement between CSX's predecessor, the City of Lumberton, and the Drainage District was made for the direct benefit of the people of Lumberton whose homes and businesses would be damaged by floods if the CSX gap were not closed.

235. The parties to the Tri-Party Agreement intended that it would directly benefit Plaintiffs and the proposed class members.

236. As alleged in paragraphs 69–73, CSX, the City of Lumberton, and the Drainage District also had an agreement that CSX would permanently close its gap. This agreement, too, was intended to directly benefit Plaintiffs and the proposed class.

237. CSX breached these contracts by:

- a. Refusing permission to close the gap in 2016 when Hurricane Matthew threatened.
- b. Refusing permission to close the gap in 2017 when Hurricane Irma threatened.
- c. Refusing permission to close the gap in 2018 when Hurricane Florence threatened.
- d. Making intimidating threats, to City employees and others, on the occasions including those pleaded above, that people would be sued, arrested, charged with felony trespass, or otherwise suffer legal consequences if they attempted to close the gap. These threats were all false, because the City had the legal right to close the gap, but the effect of them was real. CSX's intimidating threats were all the worse because during such emergencies, the recipients of these threats had no time to test the merits of the threats in court before the waters would have risen.
- e. Generally establishing a pattern of always denying the City's requests to close the gap, since at least the time of Hurricane Matthew.
- f. Refusing to construct a permanent solution or barrier.

238. As intended third-party beneficiaries of these contracts, Plaintiffs and the proposed class members have a cause of action against CSX for its breach of contract.

239. Although Plaintiffs' damages would not have occurred without some other moving force—including Hurricanes Matthew and Florence—their damages would not have occurred but for CSX's breaches.

240. CSX's breaches of the Agreement were a proximate cause of Plaintiffs' damages, because those damages flow directly and continuously from CSX's breaches.

241. Through CSX's breaches of the Agreement, Plaintiffs have suffered significant damages. As to the named Plaintiffs, collectively their losses well exceed a million dollars. As to the proposed class, the damages are in the millions.

COUNT 2: TORT CAUSE OF ACTION BASED ON A RAILROAD CORPORATION'S DUTY TO PROTECT THE PUBLIC GOOD

242. "Railroads are quasi-public corporations, created to serve primarily the public good and convenience." *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N.C. 495, 514 (1954).

243. CSX, as the successor to multiple railroad companies chartered by the State, is a quasi-public corporation, with special powers not held by other corporations, and corresponding special duties to protect the public.

244. For example, CSX, like every railroad corporation, has the statutory power to transport people and goods across the state. N.C. Gen. Stat. § 136-190(8).

245. CSX, like every railroad corporation, has the right under State law to appropriate lands and rights therein by condemnation and eminent domain. N.C. Gen. Stat. § 136-190(2).

246. CSX also has the power to construct embankments and to make cuttings into the earth, even if those works would be outside its right of way. N.C. Gen. Stat. § 136-190(5). CSX may take “as much more land as may be necessary for the proper construction and security of the road.” Id.

247. Similarly, at points where its tracks intersect with highways, CSX has the right to take lands outside its right of way if it feels that is necessary for its own operation. N.C. Gen. Stat. § 136-191.

248. The reason railroads have these special powers is their obligation to serve the public good. Along with each of these special powers, however, come special duties.

249. As an example, CSX’s statutory power to transport people and goods creates a corresponding public duty to serve the public at large, without favor or discrimination.

250. And because it has the power to condemn lands as necessary for its *own* “proper construction and security,” CSX has the corresponding duty to see that its works are similarly built for the security of the public.

251. Because CSX has the power to exceed its chartered right of way to benefit *its* interests, CSX has the corresponding duty to see that its actions do not affect the public’s interests also located outside that right of way.

252. Based on the initial levee construction, the 1978 Tri-Party Agreement, the discussions with the City over the years, the publicly available studies on causes of floods, and the repeated requests from the City to sandbag the gap, CSX had significant knowledge that its gap posed a threat to the public good.

253. However, CSX violated its duty to protect the public, and it did so in the following ways:

- a. Maintaining its gap in the levee system.
- b. Refusing to close the gap, on a permanent basis or even a temporary basis in the face of impending floods.
- c. Rebuilding its line in 2016, after it was damaged by Hurricane Matthew, in a way that worsened the risk of a future flood, which actually occurred in 2018 with Hurricane Florence.
- d. Violating the Tri-Party Agreement as discussed above.
- e. Violating its promise to build a permanent solution.

254. CSX's breaches of its public duties caused significant damages for the Plaintiffs and the members of the proposed class. As discussed above, CSX caused damages in the millions of dollars.

COUNT 3: NEGLIGENCE AND WILLFUL AND WANTON MISCONDUCT

255. CSX was negligent in owning and operating its gap. CSX had a duty to protect others, and it negligently breached that duty, causing their harm. Some actions and inactions are so egregious that CSX's misconduct rises to the level of willful and wanton misconduct. The facts supporting CSX's negligence and willful and wanton misconduct will be discussed together in this count.

256. First, the risk of harm from a flood was well-known to CSX, and thus highly foreseeable to CSX. As pleaded above:

- a. In 1977 and 1978, CSX (through its predecessor) knew that the levee system would not work properly, and would in fact channel water across CSX's property into the City of Lumberton, if CSX did not close the gap. CSX knew this because it held discussions with the City and the Drainage District about this risk, and then signed the 1978 Tri-Party Agreement.
- b. In 1977, CSX's predecessor also agreed to build a permanent solution to the flooding problem.
- c. In connection with the two storms between 2006 and 2010, CSX was contacted by the City of Lumberton. These contacts were made to CSX's roadmasters, Mr. Grooms and Mr. Small. In both cases, the City expressed the risk that the City would flood without blocking the gap and asked CSX for help.
- d. In 2016, 2017, and 2018, CSX knew that the City wanted to close the gap, because, again, City personnel were in contact with CSX during each year. The City took the time to memorialize the contact during the 2017 event in a letter, and of course the City had to make its concerns clear to CSX by going to the State to get an order from the Governor in 2018.
- e. The horrific flooding during Hurricane Matthew in 2016 was entirely foreseeable based on these prior events. But after Matthew, CSX had even more knowledge about the risk of its gap, because Matthew was a vivid demonstration of what can happen.

f. CSX was aware, or should have been aware, of the State reports that called out the CSX gap as a critical problem in causing flooding in Lumberton.

257. This knowledge, as well as the knowledge possessed by anyone of ordinary sense, placed CSX in a position towards Plaintiffs and the class members such that CSX should have recognized the danger of injury to the property of Plaintiffs and class members, if CSX did not exercise ordinary care and skill to ensure that the underpass through which its tracks ran could be blocked on a temporary basis.

258. CSX's knowledge gave rise to a common law duty of care owed by CSX to Plaintiffs and the proposed class members to ensure that CSX's right of way did not funnel floodwaters onto their properties and cause injury and damage to Plaintiffs and the proposed class members.

259. Further, CSX, by entering into the 1978 Tri-Party Agreement and continuing to operate the railroad tracks through the I-95 underpass with the above knowledge, undertook a duty to protect the Plaintiffs and the proposed class by preventing flooding through its right of way at the I-95 underpass.

260. CSX also agreed to construct a permanent fix to the problem at the gap.

261. CSX's contractual undertakings also gave rise to a common law duty of care owed by CSX to Plaintiffs and the proposed class members, to prevent flooding.

262. CSX breached its duties, despite all the knowledge it had of the risks posed by its gap, in the following ways:

- a. Not closing the gap on a permanent basis, by a floodgate or other means.
- b. Not permitting the closure of the gap on a temporary and emergency basis.

- c. Rebuilding its line in 2016, after it was damaged by Hurricane Matthew, using materials that worsened the risk of a future flood—a flood that actually occurred in 2018 with Hurricane Florence.
- d. Threatening others if they attempted to exercise the contractual rights granted in the Tri-Party Agreement.

263. The injuries and damage suffered by Plaintiffs and the proposed class members were reasonably foreseeable and avoidable if CSX exercised reasonable care in connection with its right-of-way running under I-95.

264. Had CSX fulfilled its obligations, temporary measures to prevent flooding (including sandbags) would have been in place, on time, and sufficient enough to prevent Plaintiffs' damages.

265. Although Plaintiffs' damages would not have occurred without some other moving force—including Hurricanes Matthew and Florence—their damages would not have occurred but for CSX's breaches of its duties.

266. CSX's breaches of the Agreement were a proximate cause of Plaintiffs' damages, because those damages flow directly and continuously from CSX's breaches.

267. Accordingly, CSX is liable for Plaintiffs' damages on a theory of ordinary negligence.

268. CSX's misconduct rises to the level of willful and wanton misconduct, however, because:

- a. CSX knowingly failed to honor its commitments in the 1978 Tri-Party Agreement, with the full knowledge that that would risk the safety of the person or property of the Plaintiffs and proposed class members.
- b. Its conduct generally, in operating its line and not closing its gap, was done with reckless disregard for the rights and safety of the Plaintiffs and proposed class members.
- c. In rebuilding its line after Hurricane Matthew in 2016 and using porous construction materials, CSX knew that would make it less effective as a flood barrier, even as it also knew that its railbed was already a dangerous gap in the levee system. CSX's rebuilding of the line in this manner worsened the flooding problem for Plaintiffs and the proposed class. CSX did this with complete disregard for their safety.
- d. CSX's legal threats, intended to deter the City or others from securing the town and preventing floods, were malicious and done with the full knowledge that a flood could result. They were also based on a false premise because the City had the right to enter CSX's property and take action.

269. The September 2017 voicemail, in which CSX said, "hopefully that storm doesn't end up hurting us," is a prime example of how CSX had full knowledge of the risk it was knowingly disregarding. This was just one year after Hurricane Matthew demonstrated how CSX's gap could hurt people.

270. Accordingly, CSX's breaches of its duties were wanton and willful, and it is liable for wanton and willful misconduct.

**COUNT 4: TRESPASS AND NUISANCE
ARISING FROM CSX'S INTENTIONAL DIVERSION
OF THE FLOW OF SURFACE WATERS**

271. CSX is liable for trespass, nuisance, and damages in tort, arising from its intentional diversion of the flow of surface waters.

272. Well prior to Hurricane Matthew, the City and Drainage District constructed their levee on the understanding that CSX's trackbed and property would have a specific configuration.

273. This configuration was incorporated into plans for the levee.

274. The CSX tracks' configuration was expressly referenced in the Tri-Party Agreement, as well as being expressly referenced in other documents from the 1977 timeframe.

275. Thereafter, Plaintiffs, homeowners and businesses, bought and maintained their properties in Lumberton on the basis that the land was protected from flooding by the levee (which in turn incorporated in part the CSX property's configuration).

276. However, after the washout of the trackbed in 2016, CSX intentionally undertook to rebuild its property.

277. In doing so, CSX used large aggregate which changed the porosity of the trackbed.

278. CSX's rebuilding project constituted an intentional interference, in that the flow of surface waters were redirected as a direct result of the rebuilding.

279. Accordingly, CSX is liable for trespass, nuisance, and damages, arising from this intentional interference with the usual flow of surface waters.

PRAYER FOR RELIEF

Plaintiffs respectfully ask the Court to enter judgment in Plaintiffs' favor and against CSX, as follows:

- Certifying this action as a class action and appointing Plaintiffs' counsel to serve as class counsel.
- Awarding Plaintiffs and the class their damages—including compensatory and consequential damages.
- Awarding injunctive relief in the form of an order requiring CSX to no longer pose a threat to Plaintiffs or the class.
- Awarding Plaintiffs and the class exemplary or punitive damages.
- Awarding Plaintiffs and the class pre-judgment and post-judgment interest.
- Awarding Plaintiffs and the class the costs of prosecuting this action, including reasonable attorneys' and experts' fees.
- Granting any other relief the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on any issue triable of right by a jury. Fed. R. Civ. P. 38(b).

Respectfully submitted,

/s/ Daniel K. Bryson

Daniel K. Bryson (N.C. Bar No. 15781)

Scott C. Harris (N.C. Bar No. 35328)

Matthew Lee (N.C. Bar No. 35405)

Jeremy R. Williams (N.C. Bar No. 48162)

Gary E. Mason

Danielle L. Perry

WHITFIELD BRYSON & MASON, LLP

900 West Morgan St.

Raleigh, NC 27603

Phone: (919) 600-5000

Fax: (919) 600-5035

Email: dan@wbmllp.com

scott@wbmllp.com

matt@wbmllp.com

jeremy@wbmllp.com

gmason@wbmllp.com

dpperry@wbmllp.com

Joel R. Rhine (N.C. Bar No. 16028)

RHINE LAW FIRM, P.C.

1612 Military Cutoff Road, Ste. 300

Wilmington, NC 28403

Phone: (910) 772-9960

Fax: (910) 772-9062

Email: jrr@rhinelawfirm.com

Gregory F. Coleman

GREG COLEMAN LAW PC

First Tennessee Plaza

800 S. Gay Street, Suite 1100

Knoxville, TN 37929

Phone: (865) 247-0080

Fax: (865) 522-0049

Email: greg@gregcolemanlaw.com

William F. Cash III (Fla. Bar No. 68443)
Matthew D. Schultz (Fla. Bar No. 640328)
**LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY & PROCTOR, P.A.**
316 South Baylen Street, Suite 600
Pensacola, FL 32502
Phone: 850-435-7059
Fax: 850-435-7020
Email: bcash@levinlaw.com
mschultz@levinlaw.com

Counsel for Jimmy Edwards, Robert Hunt, Dolores Hunt, Clifford McKellar, Jr., and Emma McKellar

Mark R. Sigmon (N.C. Bar No. 37762)
SIGMON LAW, PLLC
5 West Hargett Street, Suite 1001
Raleigh, NC 27601
Phone: (919) 451-6311
Fax: (919) 882-9057
Email: mark@sigmonlawfirm.com

Counsel for Antoinette Moore

Theodore J. Leopold (Fla. Bar No. 705608)
Martha Geer (N.C. Bar No. 13972)
Jay Chaudhuri (N.C. Bar No. 27747)
Adam Langino (Fla. Bar No. 31368)
COHEN MILSTEIN SELLERS & TOLL PLLC
150 Fayetteville Street, Suite 980
Raleigh, NC 27601
Phone: (919) 890-0560
Fax: (919) 890-0567
Email: mgeer@cohenmilstein.com
jchaudhuri@cohenmilstein.com
alangino@cohenmilstein.com
tleopold@cohenmilstein.com

Gary K. Shipman (N.C. Bar No. 9464)
SHIPMAN & WRIGHT, LLP
575 Military Cutoff Road, Suite 106
Wilmington, NC 28405
Phone: (910) 762-1990
Fax: (910) 762-6758
Email: gshipman@shipmanlaw.com

K. Robert Davis (N.C. Bar No. 22911)
THE BRITT LAW FIRM, P.C.
107 N. Court Square, Suite 22
Lumberton, NC 28358
Phone: (910) 671-4500
Fax: (866) 780-8245
Email: thebrittlawfirm@yahoo.com

*Counsel for West Lumberton Baptist Church, Currie
Chain Saw, Inc., C.J.M. Ventures, Inc., William
Locklear d/b/a Strickland's Barbershop, TBL,
Environmental Laboratory, Inc., Sammy's Auto Sales,
Inc., Linda Sampson, and Eric Chavis*



SEABOARD COAST LINE RAILROAD COMPANY

Office of Superintendent

3610 Bush Street

Raleigh, North Carolina 27609

E. S. WILKES
SUPERINTENDENT

October 16, 1978

1. Lumberton.3-2

Mr. H. E. Stacy, Jr.
McLean, Stacy, Henry & McLean
Attorneys and Counsellors at Law
Southern National Bank Building
Lumberton, North Carolina 28358

Re: Jacob Swamp Water Shed
Lumberton, N. C.

Dear Mr. Stacy:

Enclosed for the records of Robeson County Drainage District No. 1 is fully executed copy of tri-party agreement dated June 14, 1978, between Seaboard Coast Line Railroad Company, Robeson County Drainage District No. 1 and the City of Lumberton, N. C., covering construction and maintenance of a 10-ft. wide earthen dike on our right of way in the median strip under the twin overpasses of I-95 spanning SR-1541 and our main track, at a point 760 feet east of Mile Post S-296, at Lumberton, N. C. to protect the City of Lumberton from flooding Lumber River.

As previously advised, the agreement does not recite any monetary consideration for preparation of agreement or use of right of way; however, it does provide that should flooding be contemplated, any expenses incurred incident to closing and opening said dike across the track and roadbed will be borne by the licensees, including any costs which may be incurred by Railroad forces in connection therewith.

Very truly yours,

E. S. Wilkes
Superintendent

cc: Mr. W. G. Baxley, Director
Department of Public Works
City of Lumberton
P. O. Box 1388
Lumberton, North Carolina 28358

THIS AGREEMENT, Made this 14th day of June, 1978, by and between the SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation, hereinafter referred to as Licensor, ROBESON COUNTY DRAINAGE DISTRICT NO. 1, a body corporate and politic under the laws of the State of North Carolina, and the CITY OF LUMBERTON, a municipal corporation under the laws of the State of North Carolina, herein-after, together, referred to as Licensees,

WITNESSETH: That Licensor, for and in consideration of the sum of One Dollar to it in hand paid by Licensees, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter made and contained on the part of Licensees to be kept and performed, hereby grants unto Licensees the right or license to construct and maintain portions of a 6-foot, more or less, high (10-foot wide top with 3:1 side slopes) earthen dike on the easterly and westerly portions of Licensor's right of way at or near Lumberton, North Carolina, at a point 760 feet southeastwardly measured along the center line of Licensor's main track from Milepost SE-295; the easterly end and westerly end of said dike, adjacent to said main track, being at a minimum clearance distance of 15 feet from the center line of said main track; as particularly shown outlined in red on print of Licensee's drawing dated April, 1978, Sheet 2 of 3, attached hereto and made a part hereof; the profile of the portions of said dike being shown also on said attached print as well as print of Licensees' drawing dated April, 1978, Sheet 3 of 3, also attached hereto and made a part hereof.

And Licensees hereby covenant and agree in consideration thereof:

1. Said District shall, at Districts' expense, place and maintain sand-cement bags on the slopes of said dike, adjacent to said main track, to prevent erosion, as indicated on said attached prints.

2. Said District shall construct and maintain the portions of said dike on said right of way at Districts' entire cost and expense and in a manner in all respects satisfactory to the Division Engineer of Licensor. In the event said portions of dike shall require repair or renewal, said City shall make such repair or renewal at City's expense; and upon the failure of said City so to do, the said Division Engineer shall give written notice to said City and upon the failure of said City to make such repair or renewal within 30 days after such notice, Licensor may make all necessary repair or renewal at the cost of said City, which cost said City hereby agrees to pay on demand.

3. Said City will, at its expense, at any time, upon 30 days' written notice given by Licensor, change and alter the location of said dike to conform to any changes or improvements that may be made by Licensor in its tracks or roadway at said location, or to permit the utilization of Licensor's right of way for the construction of tracks, buildings or other structures.

4. Licensor shall not be responsible in any manner for loss of or damage to said portions of dike on said right of way from any cause whatsoever; and Licensees shall and does hereby assume, and agrees to indemnify and hold harmless Licensor, its successors and assigns, from and against all loss, costs, expenses, including attorneys' fees, claims, suits and judgments whatsoever in connection with injury to or death of any person or persons or loss of or damage to property caused by or in any way connected with the construction, maintenance, failure, or presence of said dike on said premises, excepting, however, any loss or damage caused by the negligence of Licensor, its agents, servants or employees.

5. Said District will pay to Licensor, on bills rendered by Licensor, the full amount of all costs and expenses which may be incurred by Licensor in protecting its track or tracks and maintaining traffic thereover during the construction of said dike or during any repair, renewal, relocation or removal of said dike.

6. Licensees will be obligated to assume the responsibility for any damage to Licensor's right of way which might occur as a result of the failure of said dike.

7. Said District shall install and maintain, above ground and in a manner and at such locations as may be designated by said Division Engineer, markers to plainly indicate the location and ownership of said dike.

8(a). Said City shall also have the right and privilege of closing said dike across said track and the roadbed thereof ONLY in the event the City of Lumberton is in eminent danger of flood and the closing of said dike across Licensor's property shall be subject to Licensor's Chief Dispatcher being given at least 12 hours notice prior to such closing.

(b). Said City hereby agrees that when the flooding has receded said City will open said dike across said track and roadbed thereof and that any expenses incident thereto shall be borne by said City, including, but not limited to any cost which may be incurred by Licensor in connection therewith.

9. In consideration for the right or license hereby granted, Licensees hereby agree that said Licensor shall not at any time or in any manner be assessed with the cost or any part of the cost of the construction, maintenance, use or presence of said dike on Licensor's property.

10. It is expressly understood and agreed that this agreement shall remain in full force and effect so long as the covenant and agreement set forth herein are kept and performed by the Licensees, and if the Licensees fail to keep and perform any of such covenants, terms or conditions, then the Licenser reserves the right to terminate this agreement upon thirty (30) days' notice to the Licensees. On termination of this agreement, Licensees will, at their expense, vacate the use of said right of way for the purposes herein set forth and restore, under supervision of Licenser, the land to its original condition, if required by the Licenser.

It is understood and agreed that this agreement shall not be binding until it has been authorized or ratified by a proper ordinance or resolution of the City Council of the City of Lumberton, North Carolina, a certified copy of which ordinance or resolution is attached hereto and made a part of this agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement in duplicate the day and year first above written.

Witnesses for Licensor:

H. S. Smith

SEABOARD COAST LINE RAILROAD COMPANY

By

Brown Miller (S.)
Assistant Vice President

John J. Ward

Witnesses for Licensees:

CITY OF LUMBERTON, NORTH CAROLINA

By Loyall E. Bellard (L.S.)
MayorAttest Dixie B. Bynum (SEAL)
ClerkJ.E. Stael J.

ROBESON COUNTY DRAINAGE DISTRICT NO. 1

By Cath. Hampton (L.S.)
ChairmanAttest Tycurious Young (SEAL)
Secretary

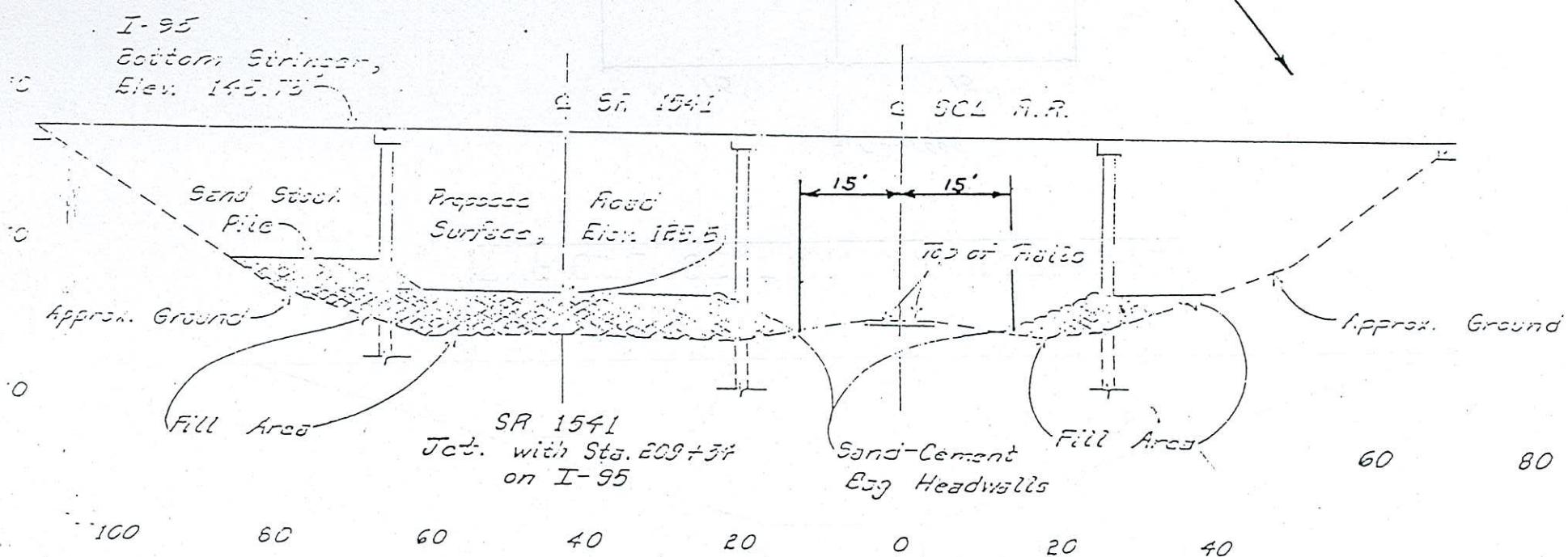
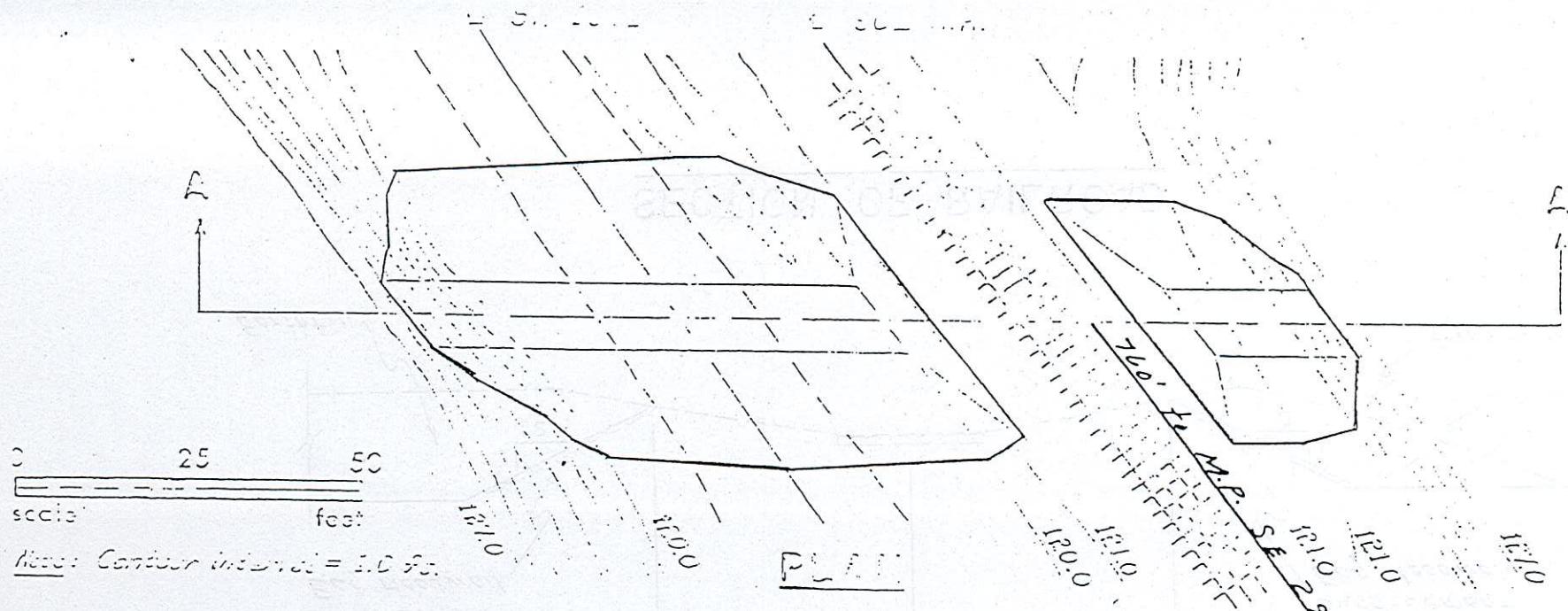
Extracts from minutes of meeting of the City Council of the City of Lumberton, North Carolina held on the 18 day of September , 1978 .

RESOLUTION

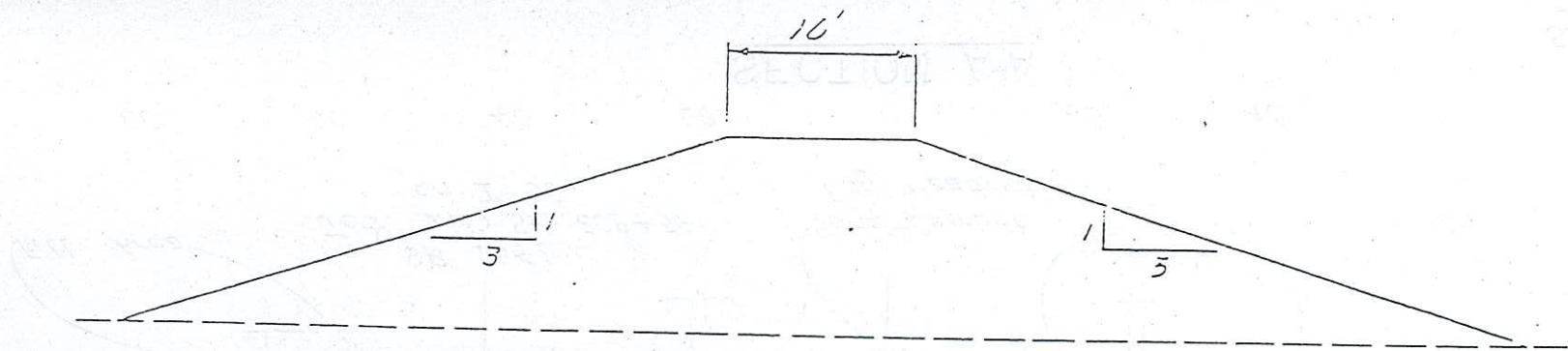
Be it resolved by the City Council of the City of Lumberton, North Carolina Mayor of said City in regular meeting assembled that the be, and he hereby is, authorized to enter into an agreement with the SEABOARD COAST LINE RAILROAD COMPANY, ~~and Robeson County Drainage District No. 1,~~ and to sign same on behalf of said City whereby said Railroad Company grants unto said Drainage District and said City the right or license to construct and maintain portions of an earthen dike on the right of way of Licensor at or near Lumberton, North Carolina, as particularly described in said agreement, which agreement is dated June 14, 1978, a copy of which agreement is filed with this City Council.

I certify the above to be a true and correct copy.

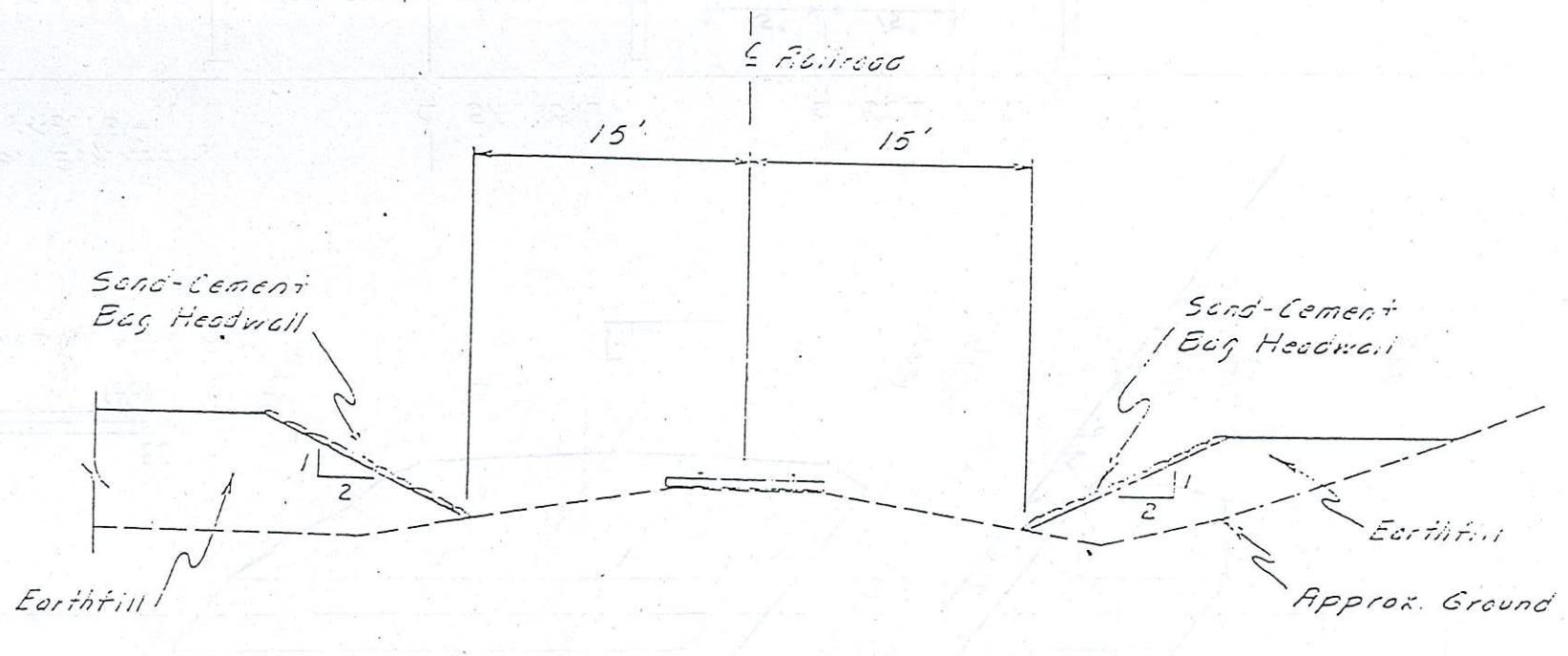
Clerk



SECTION A-A



TYPICAL SECTION OF EARTHFILL



SECTION OF RAILROAD



City of Lumberton

POST OFFICE BOX 1383

Lumberton, North Carolina
28358

Recd from
Dewberry 4/1/03

MUNICIPAL BUILDING
501 EAST 5TH STREET

OFFICE OF THE CITY MANAGER

OPERATIONAL PROCEDURES

Sandbagging Seaboard Coast Line Railroad
and

Veterans of Foreign Wars Road
under I-95

EXHIBIT 4-1-92-1F

October, 1979

Prepared by the City Manager's Office

I. PURPOSE AND INTENT

The purpose of these Operational Procedures is to affirm beyond any shadow of doubt that the protection of lives and property during times of flooding is a paramount concern of the City of Lumberton. This concern serves as the foundation for the tremendous investment of public monies and time spent to construct the dike along the southern bank of the Lumber River. When it was determined that a window in the dike system existed under I-95 at the Seaboard Coast Line Railroad and the Veterans of Foreign Wars Road, appropriate agreements were reached with the Seaboard Coast Line Railroad permitting sandbagging. This concept to "block" or "secure" the window was originally, and finally, agreed upon by the City of Lumberton, Army Corps of Engineers, Soil Conservation Services and the Federal Insurance Administration.

These operational procedures are intended to provide the public with the methods and procedures that will be used to sandbag the window at I-95. These procedures are purposefully general in nature, but, we feel, are specific enough to achieve the desired ends of providing flood protection to South and West Lumberton.

II. SOP-I - FLOODING

Normally, flooding will be a relatively slow process with adequate warning. The buildup to flood conditions will take several days, and in the meantime progressive situation reports will be available from the Raleigh Weather Service.

There is a history of recurring floods in the City of Lumberton. The municipal Communications Center receives weather bulletins from the Raleigh Weather Bureau. The warning message tells the expected severity of the flooding, the affected rivers, when and where flooding will begin. Careful preparation and prompt response has, and will continue, to reduce property loss and ensure personal safety.

Operational Procedures that will be followed during flooding, or expected flooding, are as follows:

1. Monitor all weather bulletins from the Raleigh Weather Service. City Manager is contacted immediately upon notification of potential flooding along the Lumber River.
2. City Manager, upon notification that the potential threat of flooding exists, contacts all department heads, Civil Defense and Red Cross authorities of the potential threat. A BLUE ALERT is transmitted by the City Manager to these departments and agencies and they will be notified of the existing conditions, and any changes in those conditions. At this point, they are not required to respond, but only to make themselves available should the situation develop into a more serious threat. In order to monitor the Lumber River closely, the river guage at the Cutler Moore Bridge will be read every day at 7:00 a.m., 1:00 p.m., and 11:00 p.m. All readings will be reported to the City Manager.

3. Upon notification that the Lumber River will rise above the 11' msl flood stage, the City Manager will transmit a YELLOW ALERT to all agencies placed on stand-by during the BLUE ALERT. A YELLOW ALERT indicates that the emergency has grown in size and that it has become necessary for precautionary action to be taken.
4. Upon notification that a YELLOW ALERT exists, plans will be made for the opening of an evacuee center and residents in low lying areas will be relocated as the flood situation demands. Daily inspections of the dike will be made by the Public Works Department to assure that all flood waters are being contained. Constant monitoring of the accession of flood waters in the vicinity of I-95 and the Seaboard Coast Line Railroad--Vetrans of Foreign Wars Road will begin. The Public Works Department will check the number of sandbags and sand on hand. Additional bags and sand will be ordered if needed. The Public Works Street Department will be placed on alert.
5. Upon notification that the Lumber River will crest above 120' msl or if the local monitoring of the river indicates a rise above 120' msl, the City Manager will transmit a RED ALERT to all agencies notified under the YELLOW ALERT. RED ALERT will be transmitted when an extreme emergency situation has arisen. A notice will be sent to the Seaboard Coast Line Railroad advising them to stand by for a Notice of Closure.
6. Upon notification that the Lumber River has reached the 120' msl mark, the Public Works Department will transport sandbags to the site and will block the Vetrans of Foreign Wars Road with a sandbag dike to a height of 126' msl.
7. Upon notification that the Lumber River has reached the 120.5' msl mark, and is still rising, a Notice of Closure will be sent immediately, by telephone and telegraph, to the Chief Dispatcher for the Seaboard Coast Line Railroad.
8. Upon expiration of the required twelve (12) hour notice to the Seaboard Coast Line Railroad, and if the Lumber River is still rising, the City Manager will direct the Public Works Department to begin construction of the sandbag dike across the railroad tracks. The sandbag dike will be built to a height of 126' msl.
9. The Public Works Department will maintain an hourly inspection of the sandbag dike to ensure its integrity. The Lumberton Police Department will cordon off the area and patrol it regularly to protect the sandbag dike from vandals.
10. Upon notification that the Lumber River is receeding, all agencies notified under the RED ALERT will be notified by the City Manager. Upon notification that the Lumber River has receeded to the level of 121' msl, the City Manager will notify the Seaboard Coast Line Railroad that should flood waters continue to receed, the railroad will be reopened.

11. Upon notification that the Lumber River has received to 120' msl, and maintained that level, or received further for at least an eight (8) hour period, the City Manager will direct that the sandbag dike be removed and the Railroad officially notified of the reopening. (Should the river rise again, the procedures set forth in steps 6-10 will be reinitiated.)
12. The City Manager will, once the sandbag dike has been removed, transmit a YELLOW ALERT, thereby relieving the RED ALERT status.
13. Upon notification of a YELLOW ALERT by the City Manager, the Public Works Department will monitor the river three (3) times a day as set-forth in step 2. Any increase in river depth will be reported to the City Manager and appropriate actions will be taken to ensure the safety of the area.
14. Upon notification that the Lumber River has received to a level of 111' msl, the City Manager will downgrade the YELLOW ALERT to a BLUE ALERT.
15. Upon notification that the Lumber River has received to a level of 109' msl, the BLUE ALERT will be terminated.
16. The appropriate number of sandbags, sand, and equipment will be restocked at the storage shed at the South-West Fire Station.

III. SOP-2-ROUTINE PROCEDURES

In order to maintain a high level of operational efficiency and effectiveness, periodic in-service training on the techniques of sandbagging, inspections of materials and equipment, and review of these emergency procedures are essential. The following procedures are established as guidelines for the Administration and staff to ensure that their response time and ability to react properly during times of flooding will be accurate and effective:

1. The City Manager will meet during the first week of each quarter with all department heads and other emergency agencies to review these guidelines and procedures. Appropriate changes and amendments will be made as needed.
2. The Public Works Director will inspect the sandbag storage house during the first week of each month for any damage and to ensure that enough sandbags, sand, and tools are on hand in case an emergency does arise.
3. The Public Works Director will, once every six (6) months conduct a one (1) day in-service training session for the street department employees. He will have them construct a sandbag dike on city property. This will ensure that all street department personnel will be knowledgeable in the techniques of filling and building a sandbag dike. The routes from the storehouse to the Seaboard Coast Line—Vetrans of Foreign Wars at I-95 will be discussed (see attachment 1) as well as all other emergency flood procedures.
4. The Public Works Department will constantly monitor the dike to ensure that it is being properly maintained. Any deficiencies, such as collector cleaning, mowing, etc., will be addressed.

5. The culverts under I-95 will be inspected quarterly to ensure that they are appropriately blocked and sealed.

